

AO91 (Rev. 8/01) Criminal Complaint

United States Courts  
Southern District of Texas  
FILED  
JUN 16 2006

## UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

TEXAS

**UN-SEALED PER**

Order dated 8/11/06

UNITED STATES OF AMERICA  
V.

CRIMINAL COMPLAINT

RANDY GONZALES

Case Number:

H-06-447M

(Name and Address of Defendant)



I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about October 17, 2005 in Harris County, in the Southern District of Texas defendant(s) did,

(Track Statutory Language of Offense)

knowingly and intentionally conspire with subjects, known and unknown, to knowingly and intentionally traffic in counterfeit pharmaceutical drugs namely Viagra and Cialis without the authorization of the registered holders of the trademarks.

in violation of Title 18 & 21 United States Code, Section(s) 371, 2320(a) & 331(i).

I further state that I am a(n) ICE Special Agent and that this complaint is based on the following facts:

Official Title

See Attached Affidavit

Continued on the attached sheet and made a part of this complaint: ☐ Yes ☐ No

Signature of Complainant

S/A Robert Sherman

Printed Name of Complainant

Sworn to before me and signed in my presence,

6/16/2006

Date

at

Houston, Texas

City and State

Calvin Botley, Magistrate Judge

Name and Title of Judicial Officer

Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I Robert M. Sherman, being duly sworn, depose and state:

1. I am a citizen of the United States and a resident of the State of Texas.
2. I am a Criminal Investigator with United States Immigration and Customs Enforcement (ICE) and it's predecessor, the United States Customs Service since 1991. From 1981 to 1991 Affiant was an officer and Sergeant with the Houston Police Department. Based upon my training and experience, Affiant is knowledgeable about criminal laws concerning counterfeiting of pharmaceutical drugs in violation of Title 21, United States Code, Section 331(I) , conspiracy and trafficking in counterfeit goods, in violation of Title 18, United States Code, Sections 371 and 2320(a).
3. This affidavit in support of a criminal complaint for the arrest of Randy GONZALES for violations of the Food Drug and Cosmetic Act (FDCA) , conspiracy and criminal trademark offenses by trafficking in counterfeit pharmaceutical drugs.

**INTRODUCTION**

4. United States Immigration Customs Enforcement (ICE) is an agency of the United States charged with the responsibility of investigating the smuggling of contraband into the United States including counterfeit pharmaceutical drugs.

5. Under the Food, Drug and Cosmetic Act, the definition of a “drug” includes articles which (1) are intended for use in the diagnoses, cure, mitigation, treatment or prevention of disease in man, and (2) are intended to affect the structure or function of the body of man. Due to the toxicity and other potential harmful effect, certain drugs are not considered safe for use except for use under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs.
6. Viagra is a prescription drug product that had been approved by the FDA for distribution within the United States.
7. Pfizer Pharmaceuticals (Pfizer) has the exclusive right to manufacture Viagra for distribution within the United States.
8. The name “Viagra” is a trademark owned by Pfizer and is registered in the principal registry in the United States Patent and Trademark Office.
9. Cialis is a prescription drug product that has been approved by the FDA for distribution within the United States.
10. Eli Lilly Corporation (Eli Lilly) has the exclusive right to manufacture Cialis for distribution within the United States.
11. The name “Cialis” is a trademark owned by Eli Lilly and is registered in the principal registry in the United States Patent and Trademark Office.
12. The Food Drug and Cosmetic Act also regulates the importation, delivery, distribution and receipt of prescription drugs in interstate commerce. Under the Act, a prescription drug is deemed to be counterfeit if it bears a trademark without the authorization of the registrant of the trademark.

**FACTS AND CIRCUMSTANCES**

13. This investigation originated in October of 2005 when investigators with Pfizer contacted the Houston Office of the ICE Special Agent in Charge. Operatives working in Asia had been contacted via e-mail and telephone from an individual identifying himself as "Randy" and alternately using the e-mail addresses ac220875@hotmail.com and omarichina@hotmail.com. Randy was subsequently identified as "Randy GONZALES". GONZALES was offering undercover Pfizer operatives Viagra and other lifestyle drugs for sale. At the direction of ICE SAC Houston, the Pfizer operatives provided GONZALES an undercover telephone number and e-mail address operated by SAC Houston purporting to be a trafficker in pharmaceuticals based in Houston, Texas. On October 5, 2005 GONZALES, using e-mail address omarichina@hotmail.com contacted the Pfizer operative and stated his contact in Texas was named "Fayez" and would call the ICE undercover agent.
14. On October 6, 2005 a Pfizer operative met with GONZALES in Shanghai, Peoples Republic of China and paid him \$625.00 for the delivery of 25 30-count bottles of Viagra to Affiant in Houston, Texas. GONZALES subsequently provided the cellular telephone number for Fayez to the operative to provide to Affiant to contact Fayez. The telephone number was (281) 731-0302. GONZALES was covertly photographed at the meeting.

15. On October 7, 2005 Affiant contacted Fayeze at the aforementioned number and arranged to meet at the food court of the Greenspoint Mall located at 12300 North Freeway, Houston Texas to accept delivery of a package. At 1130a.m., Affiant met Fayeze in the food court and followed him to his vehicle, a green Honda Accord bearing Texas license 411DCD. Fayeze retrieved the 25 30-count bottles from the trunk of his vehicle, pointed out and discussed the Pfizer label, foil security seal and blue diamond shape Viagra tablets with registered trademarked markings. Affiant requested that Fayeze ask GONZALES if he could change the lot numbers on the bottles. Fayeze assured Affiant he would. The meeting concluded with Fayeze and Affiant exchanging telephone numbers.
16. Utilizing Texas Department of Public Safety Citizen and Immigration Services data bases and records, "Fayeze" was identified as Fayeze ALEDOUS, a Jordanian national and Legal Permanent Resident of the U.S. with alien registration number 078 131 552.
17. On October 10, 2005, GONZALES, using omarichina@hotmail.com contacted the Pfizer operative requesting feedback from Affiant regarding the delivery and added he had other customers interested in "merchandise", meaning counterfeit pharmaceutical drugs.
18. On October 12, 2005 Affiant e-mailed GONZALES using omarichina@hotmail.com and commented on the successful delivery by ALEDOUS. Affiant also expressed interest in future purchases.

19. On October 13, 2005 GONZALES, sent Affiant an e-mail stating he had inventory in Texas. Affiant understood that to mean GONZALES had counterfeit pharmaceutical drugs stored in Texas. Affiant engaged in numerous e-mail communications with GONZALES regarding future purchases. Thereafter, in an October 14, 2005 e-mail to GONZALES, Affiant expressed interest in a purchase of 2000 Viagra tablets, specifically mentioning delivery by ALEDOUS.
20. On October 17, 2005, GONZALES replied via e-mail that he did not deal in such small orders. GONZALES maintained his minimum order was 1000 bottles (30,000 tablets) but would allow Affiant to make a 500-bottle order (15,000 tablets) at \$25.00 per bottle.
21. On October 20, 2005, GONZALES sent an e-mail with Western Union wiring instructions for method of payment. Payment was to be sent to Ding Bei HUA, Yiwu City, Zhejiang Province, China 322000. On November 6, 2005, Affiant responded via e-mail indicating that bank wiring instructions was preferred rather than Western Union.
22. On November 6, 2005, GONZALES e-mailed Affiant with wiring instructions for Industrial & Commercial Bank of China, Zhejiang provincial branch, Yiwu sub-branch, account holder DINB BEI HUA, account number JHYW 1208 0212 0110 1061 244. On November 9, 2005 Affiant wired \$12,500 to the aforementioned account in China for the purchase of 500 bottles of Viagra.

23. On November 11, 2005 at 7:33a.m., Affiant received a telephone call from 011 861 35169 51094. The calling party identified himself as Randy GONZALES and spoke with a pronounced Filipino accent. GONZALES acknowledged receiving payment and asked if ALEDOUS had contacted Affiant about the delivery. When Affiant responded contact had not been made, GONZALES sounded disturbed and said he would call Affiant later. At 7:23p.m., GONZALES called Affiant and again asked if the pills had been delivered. When Affiant again responded negatively, GONZALES stated he would take care of it. At approximately 8:27p.m., Affiant received a call from ALEDOUS' cellular phone but did not answer it. On November 12, 2005 Affiant called ALEDOUS and made arrangements to accept delivery of the 500 bottles.
24. On November 14, 2005 at approximately 11:20a.m., Affiant met ALEDOUS in a parking lot located at 6100 Westheimer, Houston, Texas. ALEDOUS produced a box containing 500 bottles containing blue diamond shape tablets with registered trademark markings from the trunk of his Honda Accord. Affiant closely examined and commented on the bottle, labels and tablets with ALEDOUS. Affiant briefly discussed with ALEDOUS how quickly GONZALES was able to fill the order. The pills were later examined by officials with Pfizer and determined to be counterfeit Viagra tablets.
25. On November 15, 2005 Affiant e-mailed GONZALES and informed him ALEDOUS had completed the delivery of 500 bottles of Viagra. On

November 16, 2005 GONZALES sent an e-mail response stating he was glad to hear the transaction went smoothly.

26. On January 9, 2006 Affiant met ALEDOUS at 6100 Westheimer to discuss the pharmaceutical venture. In the course of the conversation ALEDOUS admitted that he received the tablets, bottles and labels separately. Upon receipt of all the components he assembled them for sale. ALEDOUS stated he had spoken to GONZALES two or three days before Christmas regarding a customer. Affiant asked ALEDOUS for loose Viagra tablets and some unused sample Pfizer Viagra labels. Affiant explained to ALEDOUS that Affiant sold the pills to small town pharmacies that mixed the pills with genuine ones. ALEDOUS agreed to deliver the tablets and labels the following day.
27. On January 10, 2006, at 1:22p.m., Affiant met ALEDOUS at the U.S. Post Office parking lot located at the 2900 block of Unity Drive, Houston, Texas. ALEDOUS provided Affiant with approximately 600 blue, diamond shape tablets with the Pfizer registered markings and two sheets of unused, adhesive backed Pfizer Viagra labels. Affiant engaged ALEDOUS in a conversation in which Affiant explained to that it was easier to copy the labels than copy the pills. Affiant paid ALEDOUS \$750.00 for the pills and labels. The pills were later examined by Pfizer and determined to be counterfeit Viagra tablets.
28. On February 1, 2006 Affiant met ALEDOUS at 2900 Unity, Houston, Texas to purchase 30, 30-count bottles of Viagra. ALEDOUS arrived at 11:15a.m. in his Honda Accord. Affiant showed ALEDOUS a genuine 4-count Pfizer


100 mg Viagra bottle and compared it to ALEDOUS' bottle. Affiant pointed out the differences between the label's printing colors and security foil and compared the differences between a genuine tablet and one of ALEDOUS' tablets. Affiant paid ALEDOUS \$1100.00 and accepted custody of the 30 bottles. The pills were later examined and determined to be counterfeit Viagra tablets.

29. Pfizer investigators informed Affiant they sent a \$2500.00 Western Union money Wire to GONZALES on February 28, 2006 under tracking number 7852584946 and a second wire for \$300.00 on March 2, 2006 under tracking number 6053107134 for the purchase of Viagra. Affiant obtained a subpoena for the aforementioned transactions and received the records from Western Union. The records revealed that an individual who identified himself as Randy Gonzales accepted both money wires in the Peoples Republic of China.
30. On February 28, 2006 Affiant received an e-mail from GONZALES at [guli1984@gmail.com](mailto:guli1984@gmail.com) stating that it was his new address and to address all correspondence to the new address.
31. Between February 28, 2006 and June 12, 2006, Affiant engaged in numerous e-mail communications with GONZALES in which he offered Affiant Viagra and Cialis. On May 19, 2006, GONZALES sent Affiant an e-mail stating he was closing his U.S. marketing due to Customs matters and added his broker wanted more money. In subsequent e-mails, Affiant offered Affiant's undercover apparel importing business as a vehicle to smuggle his pills into

the U.S. In a May 27, 2006 e-mail Affiant offered to meet him in Bangkok to discuss the venture. On June 2, 2006 GONZALES sent Affiant an e-mail expressing interest in meeting in Bangkok or China to discuss the importation of counterfeit pharmaceutical drugs into the United States.

32. On June 1, 2006 at 10:17p.m. Affiant received a telephone call from GONZALES from number 011 86 131754 06940. GONZALEZ stated he had merchandise available in the U.S. GONZALES also stated he wanted to discuss meeting in Bangkok. GONZALES said his U.S. connection was asking a 100% markup. GONZALES wanted to liquidate his U.S. inventory and sever his current U.S. relationship. GONZALES again offered Viagra and Cialis. Affiant engaged in several e-mail communications with GONZALES regarding the U.S. inventory and product.
33. On June 12, 2006, Affiant received an email from GONZALES regarding the importation and distribution of counterfeit pharmaceutical drugs bearing the

trademarks Viagra and Cialis.

  
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Robert Sherman, Special Agent  
Department of Homeland Security  
Immigration Customs Enforcement

SWORN TO AND SUBSCRIBED BEFORE ME ON THE \_\_\_\_

16<sup>th</sup>, DAY OF JUNE, 2006, AND I FIND PROBABLE CAUSE.

  
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CALVIN BOTLEY  
UNITED STATES MAGISTRATE JUDGE